
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: April 16, 2009

IBA Report Number: 09-34

Rules, Open Government and

Intergovernmental Relations Committee Date: April 22, 2009

Item Number: 2

IBA Review of Proposed Changes to SEDC and CCDC Operating Agreements

OVERVIEW

In September 2008, the City Auditor released a report on the Southeastern Economic Development Corporation (SEDC) Performance Audit of Operations conducted by Macias Consulting Group. The audit found significant weaknesses with respect to SEDC's operations in a number of areas including governance; policies and procedures; staffing; budget and finance matters; community input; board training; and lack of Agency oversight. The firm of Sjoberg/Evashenk was hired by the City in December 2008 to undertake a performance audit of the Centre City Development Corporation (CCDC). This audit is underway and is expected to be completed in June 2009. Since release of the SEDC audit in September, the following work has taken place on the development of amendments to the existing operating agreements to address audit findings:

- Audit findings for SEDC were presented to Audit Committee on September 15, 2008, and direction was given to the IBA to develop recommendations for amending the existing operating agreement with SEDC to address the issues raised in the audit.
- SEDC Board issued audit response to City Auditor on November 24, 2008 and the Internal Auditor provided analysis of SEDC's response to Audit Committee on January 7, 2009.

- IBA released Report 09-01, January 13, 2009, “Recommended Changes for SEDC Operating Agreement” and presented report to Audit Committee on January 26, 2009.
- On March 3, 2009, the City Attorney issued a memorandum opining on “Redevelopment Agency and City Relationship to CCDC and SEDC.”
- At Rules Committee on March 4, 2009, the IBA presented Report 09-01, “Recommended Changes for SEDC Operating Agreement” (previously presented at Audit Committee in January).
- On March 20, 2009, the Mayor issued a memo outlining his recommendations for restructuring the oversight of CCDC and SEDC by the City of San Diego and the City Redevelopment Agency. The Mayor’s recommendations were presented at the Audit Committee of March 23 and again at Rules Committee on March 25.

The outcome of the work to date and the deliberations of the Audit and Rules Committees is the attached motion, which will be considered again at the April 22 Rules meeting. (See Attachment A) It should be noted that upon receipt of the CCDC audit in June, other revisions to the agreements may be considered if new issues or concerns are raised. For reference purposes, our office provided a comparison of the adopted motion to the original IBA and Mayoral recommendations in IBA Report 09-27, issued on April 2, 2009. This report, along with the full motion, was provided to the Boards of CCDC and SEDC on April 2 to assist them in their review of the pending proposals, and is included in your backup. The Rules Committee has requested the Boards to share their feedback at the next Rules Committee meeting.

Since the last Rules Committee meeting, the IBA has also had the opportunity to more carefully consider the Mayor’s recommendations and the motion. As the Mayor’s recommendations were issued on the Friday before the Monday, March 23 Audit Committee, our office was only able to provide brief verbal comments on key issues of concern at the Audit Committee meeting.

The purpose of this report is to outline the concerns the IBA initially expressed at the Audit Committee, as well as to raise additional issues after further consideration of the motion. The IBA recommends several revisions to the motion, as it currently stands, for Rules Committee consideration.

SUMMARY OF IBA REVIEW

The IBA has reviewed the governance proposals contained in the motion from the perspective of joint accountability and oversight, and a balance of authority between the Executive and Legislative branches. We have also given further consideration to the role of the Corporation Boards in the hiring of their CEOs given that it is the Board members who are responsible for working closely with the CEO on a daily basis and providing operational oversight.

With respect to Board membership and elected official representation on the Boards, in our first report we raised the concern of “incompatibility of office” whereby conflicts could occur when an elected official holds two public offices. To avoid this issue, we revisited our original recommendation for each Board to be expanded by one seat to be filled by a senior member of the City administration with redevelopment or planning expertise, in lieu of new Council or Mayoral representatives.

We have further considered the fact that the Mayor’s role in redevelopment in this form of government has not yet been defined by Charter. The Mayor’s current role as Redevelopment Agency (RDA) Executive Director is temporary in nature, vested upon him by City Council action for an interim period. Summer 2007 the Mayor’s Charter Review Committee was charged with reviewing the Mayor’s role in redevelopment and developing recommendations for a Charter change to address this matter. The Charter Review Committee reached no consensus and the Mayor’s role has not been defined.

The adopted motion provides for the following key changes related to governance structure:

For hiring of the CEOs, the **Mayor** will have one representative on a CEO Selection Committee which will screen candidates and recommend no less than three candidates to the Mayor. The Mayor will be designated the sole appointing authority for the CEO. The Mayor will also have new authority to terminate the CEO. In the event of CEO termination, the Mayor will be the hiring authority for an interim CEO. No time limit has been set for the Interim CEO. The Mayor will have a new voting representative on each of the Boards. The Mayor will appoint all other Board members and will have new authority to suspend and recommend removal of Board members to the Council.

The **City Council** will have one member on the CEO Selection Committee. Upon Mayoral appointment of the CEO, the Council will confirm with a two-thirds vote. The Council would be involved in termination of the CEO in the event of appeal. The Council has no voting or ex officio Council representatives on the Boards. The Council would confirm the Mayor’s Board appointments as exists today; and would need to approve the Mayor’s recommendations for removal of a Board member.

The **Board** will have one member on the CEO Selection Committee. The Board has no role in the appointment process or termination process. The Board would approve compensation and benefits annually for all senior officials including the CEO.

The chart below helps to illustrate the roles of the Mayor, Council, and Corporation Boards, per the motion, in the following governance areas: hiring and terminating the CEO; appointing an interim CEO; Board member appointment and removal; CEO salary and bonus setting; and elected official representation on the Boards.

	CEO Selection Committee	CEO Appointment	Terminate CEO	Appoint/Interim CEO *	Set CEO Salary w/Benefits	Appoint Board	Remove Board	Elected Official Board Representative
MAYOR	1 Rep	Appoint	Terminate	Appoint	_____	Appoint	Remove	Yes, voting
COUNCIL	1 Rep	Confirm by 2/3s vote	Appeal by 2/3s vote	_____	_____	Confirm	Confirm	_____
BOARD	1 Rep	_____	_____	_____	Board Role	_____	_____	_____

* Upon termination of CEO.

The specific sections from the motion that address these matters are Sections 1, 2, 8 and 13. (See Attachment A)

IBA RECOMMENDED REVISIONS

The following revisions are recommended for each of the governance components:

Hiring of the CEO

The IBA recommends a Selection Committee be created consisting of a Mayoral representative, two members of City Council and two members of the Board.

The Selection Committee would oversee the CEO recruitment process, serve as the screening panel and recommend at least three candidates to be considered for CEO appointment by the Joint Hiring Authority.

Designate the Mayor, Council and the Board as the Joint Hiring Authority for the Corporation CEOs.

Termination of the CEO

Under the IBA proposal, the Mayor would retain (as recommended in the motion) the authority to suspend and terminate the CEO subject to right of appeal to the Council by a two-thirds vote.

In the event of CEO termination, the Mayor would also have the authority to appoint an Interim CEO. IBA recommends including a cap of one year for the interim appointment.

While the IBA is recommending that the hiring of the CEO be a shared responsibility of the Mayor, Council and Board, we support the Mayor having the authority to act quickly to remove and replace with an Interim CEO if the situation warrants it. However, in the event of alleged fraud, embezzlement or any other material violation of law, we propose the Council be given the authority to act to terminate if the Mayor does not. In this situation as well, the Mayor would have the authority to appoint an Interim CEO.

Elected Official Representation on Corporation Boards

The IBA recommends creating an additional voting position for each of the Boards to be assumed by a senior member of the City's administration with expertise in either planning or redevelopment. This would be in lieu of the current motion to add a Mayoral representative to each of the Boards, or an earlier proposal to also add Council representatives.

This would avoid issues of conflict related to "incompatibility of office" as discussed earlier, and would also bring a valuable City-wide perspective and additional expertise to Board deliberations. It is also unclear how an additional Mayoral representative would differ from any other board member appointed by the Mayor.

Suspension of Corporate Board Members

The IBA supports the Mayor having the right to suspend Board members, based on breach of operating agreements, with Council approval, as proposed.

Salary Setting of Senior Officials

The pending motion calls for the Boards to set the salaries and benefits of senior officials and approve their performance pay. We support this for senior officials of the agencies with the exception of the CEO. Upon Council confirmation of the CEO, we recommend the City Council consult with the Mayor and Board Chair and approve a compensation package for the CEO.

We further recommend that the Mayor and Council jointly conduct an annual performance review of the CEO, with input from the Board, and approve any pay adjustments.

CONCLUSION

The IBA requests Rules Committee consideration of IBA proposed revisions contained in this report which address the governance components of the SEDC and CCDC operating

agreements. The IBA believes that a revised governance structure, as proposed, more adequately provides for shared accountability and oversight by both branches of government, as well as the Corporation Boards.

[SIGNED]

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Attachment A: Rules Committee Motion, March 25, 2009